

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2674

**Introduced by ~~Committee on Labor and Employment~~ (Assembly
Members ~~Swanson~~ (Chair), ~~Alejo, Allen, and Yamada~~) Assembly
Member *Swanson***

March 5, 2012

An act to amend Section 1198.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2674, as amended, ~~Committee on Labor and Employment~~ *Swanson*. Employment records: right to inspect.

Under existing law, an employee has the right to inspect the personnel records that his or her employer maintains relating to the employee's performance or to any grievance concerning the employee.

This bill would require an employer to maintain personnel records for a specified period of time and to provide a current or former employee, or his or her representative, an opportunity to inspect and receive a copy of those records within a specified period of time, except during the pendency of a lawsuit filed by the employee or former employer relating to a personnel matter. In addition, in the event an employer violates these provisions, the bill would permit a current or former employee or the Labor Commissioner to recover a penalty of \$750 from the employer, and would further permit a current or former employee to obtain injunctive relief and attorney's fees.

Under existing law, an employer who fails to permit an employee to inspect the employee's personnel records is guilty of a misdemeanor punishable by a fine or imprisonment, as specified.

This bill would, instead, provide that a violation of the above provisions requiring that personnel records be made available for inspection constitutes an infraction. Although this bill would change a violation of the above provisions requiring that personnel records be made available for inspection from a misdemeanor to an infraction, by expanding the scope of what would constitute an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1198.5 of the Labor Code is amended to
2 read:
3 1198.5. (a) Every current and former employee, or his or her
4 representative, has the right to inspect and receive a copy of the
5 personnel records that the employer maintains relating to the
6 employee's performance or to any grievance concerning the
7 employee.
8 (b) *(1)* The employer shall make the contents of those personnel
9 records available for inspection to the current or former employee,
10 or his or her representative, at reasonable intervals and at
11 reasonable times, but not later than 30 calendar days from the date
12 of the employer receives a written or oral request, as specified, for
13 these records unless the current or former employee, or his or her
14 representative, and the employer agree in writing to a date beyond
15 30 calendar days to inspect the records, and the agreed-upon date
16 does not exceed 35 calendar days from the employer's receipt of
17 the written request. Upon a written request from a current or former
18 employee, or his or her representative, the employer shall also
19 provide a copy of the personnel records, at a charge not to exceed
20 the actual cost of reproduction, not later than 30 calendar days
21 from the date of the employer receives the request, unless the
22 current or former employee, or his or her representative, and the
23 employer agree in writing to a date beyond 30 calendar days to

1 *produce the copies of the records, as long as the agreed-upon date*
2 *does not exceed 35 calendar days from the employer's receipt of*
3 *the written request.* Except as provided in paragraph (2) of
4 subdivision (c), the employer is not required to make those
5 personnel records or a copy thereof available at a time when the
6 employee is actually required to render service to the employer,
7 if the requester is the employee.

8 (2) (A) *For purposes of this section, a request to inspect or*
9 *receive copies of personnel records shall be made in either of the*
10 *following ways:*

11 (i) *Written and submitted by the current or former employee or*
12 *his or her representative.*

13 (ii) *Written and submitted by the current or former employee*
14 *or his or her representative by completing an employer-provided*
15 *form.*

16 (B) *An employer-provided form shall be made available to the*
17 *employee or his or her representative upon verbal request to the*
18 *employee's supervisor or, if known to the employee or his or her*
19 *representative at the time of the request, to the individual the*
20 *employer designates under this section to receive a verbal request*
21 *for the form.*

22 (c) The employer shall do *all* of the following:

23 (1) With regard to all employees, maintain a copy of each
24 employee's personnel records for a period of not less than three
25 years after termination of employment.

26 (2) With regard to current employees, make a current employee's
27 personnel records available for inspection, and, if requested by the
28 employee or his or her representative, provide a copy thereof, at
29 the place where the employee reports to work, or at another location
30 agreeable to the employer and the requester. If the employee is
31 required to inspect or receive a copy at a location other than the
32 place where he or she reports to work, no loss of compensation to
33 the employee is permitted.

34 (3) (A) With regard to former employees, make a former
35 employee's personnel records available for inspection, and, if
36 requested by the employee or his or her representative, provide a
37 copy thereof, at the location where the employer stores the records,
38 unless the parties mutually agree in writing to a different location.
39 A former employee may receive a copy by mail if he or she
40 reimburses the employer for actual postal expenses.

(B) (i) Notwithstanding subparagraph (A), if a former employee seeking to inspect his or her personnel records was terminated for a ~~serious~~ violation of law, or an employment-related policy, involving harassment or workplace violence, the employer may comply with the request by doing one of the following:

(I) Making the personnel records available to the former employee for inspection at a location other than the workplace that is within a reasonable driving distance of the former employee's residence.

(II) Providing a copy of the personnel records by mail.

(ii) Nothing in this subparagraph shall limit a former employee's right to receive a copy of his or her personnel records.

(d) An employer is required to comply with only one request per year by a former employee to inspect or receive a copy of his or her personnel records.

(e) The employer may take reasonable steps to verify the identity of a current or former employee or his or her authorized representative. For purposes of this section, "representative" means a person authorized in writing by the employee to inspect, or receive a copy of, his or her personnel records.

(f) The employer may designate the person to whom a request is made.

(g) Prior to making records specified in subdivision (a) available for inspection or providing a copy of those records, the employer may redact the name of any nonsupervisory employee contained therein.

(h) The requirements of this section do not apply to:

(1) Records relating to the investigation of a possible criminal offense.

(2) Letters of reference.

(3) Ratings, reports, or records that were:

(A) Obtained prior to the employee's employment.

(B) Prepared by identifiable examination committee members.

(C) Obtained in connection with a promotional examination.

(4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights (Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code).

(5) Employees of agencies subject to the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

1 (i) If a public agency has established an independent employee
2 relations board or commission, an employee shall first seek relief
3 regarding any matter or dispute relating to this section from that
4 board or commission before pursuing any available judicial
5 remedy.

6 (j) In enacting this section, it is the intent of the Legislature to
7 establish minimum standards for the inspection and the receipt of
8 a copy of personnel records by employees. Nothing in this section
9 shall be construed to prevent the establishment of additional rules
10 for the inspection and the receipt of a copy of personnel records
11 that are established as the result of agreements between an
12 employer and a recognized employee organization.

13 (k) If an employer fails to permit a current or former employee,
14 or his or her representative, to inspect or copy personnel records
15 within the times specified in this section, or times agreed to by
16 mutual agreement as provided in this section, the current or former
17 employee or the Labor Commissioner may recover a penalty of
18 seven hundred fifty dollars (\$750) from the employer.

19 (l) A current or former employee may also bring an action for
20 injunctive relief to obtain compliance with this section, and may
21 recover costs and reasonable attorney's fees in such an action.

22 (m) Notwithstanding Section 1199, a violation of this section
23 is an infraction. Impossibility of performance, not caused by or
24 resulting from a violation of law, may be asserted as an affirmative
25 defense by an employer in any action alleging a violation of this
26 section.

27 (n) If an employee or former employee files a lawsuit that relates
28 to a personnel matter against his or her employer or former
29 employer, the right of the employee, former employee, or his or
30 her representative to inspect or copy personnel records under this
31 section ceases during the pendency of the lawsuit in the court with
32 original jurisdiction.

33 (o) For purposes of this section, a lawsuit "relates to a personnel
34 matter" if a current or former employee's personnel records are
35 relevant to the lawsuit.

36 SEC. 2. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

- 1 for a crime or infraction, within the meaning of Section 17556 of
- 2 the Government Code, or changes the definition of a crime within
- 3 the meaning of Section 6 of Article XIII B of the California
- 4 Constitution.

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